

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHARLES GRANT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 21057 ✓

JAMES HENRY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

No. 21058 ✓

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

FILED

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APPELLEE'S BRIEF

I

STATEMENT OF JURISDICTION

The appellants were indicted in one indictment, by the Federal Grand Jury for the Southern District of California, Central Division, for violations of Title 18, United States Code, Sections 371 - Conspiracy, 2313 - Receiving Stolen Motor Vehicle in Inter-state Commerce, and 2 - Aiding and Abetting [C. T. 2]. ^{1/}

^{1/} C. T. refers to Clerk's Transcript.

Following a court trial before the Honorable Thurmond Clarke, United States District Judge, from March 9, 1965 to March 26, 1965, in the District Court for the Southern District of California, Central Division, appellant Charles Grant was found guilty of Counts One, Two, Five, Six and Seven, and appellant James Henry was found guilty of Counts One, Two and Four. Appellant Grant was convicted and sentenced on April 27, 1965, to five three-year terms of imprisonment, the five terms to run concurrently [C. T. 36]. Appellant Henry was convicted and sentenced on May 25, 1965, to three three-year terms of imprisonment, the three terms to run concurrently [C. T. 40]. The remainder of the defendants, Henry Campbell, Harry Joe Tucker, Roosevelt Wooten and James Chester Taylor were convicted and have not appealed.

Appellant Grant filed, on April 29, 1965, a Notice of Appeal from the Judgment [C. T. 41]. Appellant Henry filed on May 25, 1965, a Notice of Appeal from the Judgment [C. T. 44].

The District Court had jurisdiction under the provisions of Title 18, United States Code, Sections 371, 2, 2312, 2313 and 3231.

This Court has jurisdiction to review the judgments of the District Court pursuant to Title 28, United States Code, Sections 1291 and 1294.

II

QUESTIONS PRESENTED

1. Whether the evidence presented was sufficient to sustain a conviction of appellant Grant.
2. Whether the appellant Grant was denied adequate representation of counsel under the Sixth Amendment of the Constitution.
3. Whether the evidence presented was sufficient to sustain a conviction of appellant Henry.

III

STATEMENT OF FACTS

Briefly, Henry Campbell, a resident of St. Louis, Missouri, stole automobiles in St. Louis and either transported, or caused to be transported, said automobiles to Roosevelt Wooten in Los Angeles, California. Before the operation was set up, Wooten agreed with the two appellants that the appellants would pay for the automobiles once they arrived in Los Angeles. Four specific Cadillacs are involved in the case. The stolen character of the Cadillacs is conceded in the opening briefs of both appellants [Grant's Opening Brief, p. 5, lines 1-3; and Henry's Opening Brief, p. 5, lines 1-3]. It is further conceded that two stolen Cadillacs were in the possession of appellant Henry at the time of his arrest [Henry's Opening Brief, p. 5, lines 3-7].



The gist of the defense was that no agreements were made and there was no knowledge by appellants Grant and Henry that the automobiles were stolen.

TESTIMONY OF ROOSEVELT WOOTEN:

In the fall of 1962 indicted co-conspirator Roosevelt Wooten met with indicted co-conspirators Harry Joe Tucker and Charles Grant at Grant's garage in Los Angeles [R. T. 142], ^{2/} and discussed getting stolen automobiles from "back east", and selling said automobiles in California [R. T. 143-144]. Grant initiated the conversation about stolen vehicles [R. T. 144]. Wooten explained to Tucker and Grant that he knew a fellow in St. Louis who would probably help them [R. T. 144-145]. One or two days later Wooten met Grant at Grant's garage and they proceeded to appellant James Henry's used car lot [R. T. 145-146]. Grant introduced Wooten to Henry and told Henry that Wooten was the man they "needed to help get cars from back east" [R. T. 145, 146]. The three discussed that Wooten would have to go back to St. Louis and talk with his acquaintance (indicted co-conspirator Henry Campbell) [R. T. 149]. Several days later Wooten returned to Henry's used car lot and discussed the prices to be paid by Henry for the stolen automobiles: \$1,400 for a 1962 Cadillac, \$1,600 for a 1963 Cadillac, and \$1,800 for a convertible [R. T. 149-150].

^{2/} R. T. refers to Reporter's Transcript.

Henry suggested that Wooten fly back to St. Louis to discuss the matter with his "man" and, after giving Wooten \$300, Wooten went to St. Louis and told indicted co-conspirator Henry Campbell that "some people out here" could sell stolen automobiles [R. T. 151-152]. Campbell agreed to provide the stolen Cadillacs and told Wooten the method by which he, Campbell, would inform Wooten when an automobile was enroute [R. T. 153]. The meeting with Campbell took place at the end of September, 1962, or the beginning of October [R. T. 153]. After the amount to be received for the various automobiles was discussed [R. T. 152], Wooten returned to Los Angeles and reported to Henry that the vehicles would be arriving soon [R. T. 153].

Shortly after returning Wooten received a phone call from Campbell saying a Cadillac was on its way [R. T. 154]. A man by the name of James Harris delivered a 1962 White Cadillac with Missouri license plates to Wooten (the automobile referred to in Count Two of the Indictment), and Wooten then took it to Grant's garage [R. T. 154-155]. Grant then took the 1962 white Cadillac to Henry's [R. T. 162]. In November 1962, when Henry received the automobile, Henry told Wooten there would be more money for Wooten if the cars were registered [R. T. 163]. Henry advised Wooten on how to alter documents for the purpose of obtaining a proper registration of the automobile [R. T. 166-167].

On March 1, 1963, Wooten went to the California Department of Motor Vehicles with Charles Shafer for the purpose of registering the 1962 white Cadillac [R. T. 167-168, Ex. 5C]. The



document Ex. 5C, was prepared in the office of Henry by Henry's staff [R. T. 212]. While registration was obtained a "pink slip" was not [R. T. 168-169]. Wooten paid for the registration with a check that "bounced" and later Henry paid the amount with a money order [R. T. 169; appellant Henry, R. T. 713]. The 1962 white Cadillac stayed with appellant Henry until the time of his arrest [Testimony of Henry, R. T. 696]. After the registration of the 1962 white vehicle, Henry gave Wooten \$600, half of which was sent to Campbell in St. Louis [R. T. 171]. Henry stated at one time to Wooten that Tucker did a bad job of changing the numbers on the white 1962 Cadillac [R. T. 235].

In June of 1963, Henry told Wooten he wanted another Cadillac [R. T. 172-173]. Wooten called Campbell and in a few days a 1963 blue Cadillac [the automobile referred to in Counts Three and Four of the Indictment] was delivered to Wooten by Campbell personally [R. T. 172-174]. The blue Cadillac was delivered to Henry by Wooten and Henry paid \$400 to Wooten [R. T. 174].

At one time Henry told Wooten that co-conspirator Tucker was changing the numbers on the cars brought out by Wooten [R. T. 175-176].

In November of 1963 a red 1963 Cadillac convertible (the automobile referred to in Counts Six and Seven) was brought to California by James Perry, and was given to appellant Grant by Wooten [R. T. 176-178]. At the time, Grant expressed displeasure with the fact that the aforementioned blue Cadillac had been taken



to Henry, instead of himself [R. T. 177]. The red convertible stayed at Grant's for a few days and then Tucker told Wooten that it was in his (Tucker's) garage [R. T. 179]. Wooten went to Tucker's garage and saw the 1963 red convertible in the garage [R. T. 288]. While looking at the red convertible in Tucker's garage, Grant arrived and told Wooten that there was a customer for the car and the reason the car was in Tucker's garage was because there was a policeman having some work done at Grant's garage [R. T. 288-289].

TESTIMONY OF NATHAN BUTLER:

From September of 1963 and into 1964 Butler had several discussions with appellant Grant and defendant Tucker about stolen Cadillacs [R. T. 64-65, 74]. During the course of the discussions Tucker stated that his 1959 Dodge was also a stolen car and had had its numbers changed [R. T. 12]. Tucker first offered Butler a 1963 blue Cadillac [R. T. 64].

Both Grant and Tucker told Butler the cars being offered for sale were being stolen back east and brought to California [R. T. 60].

Tucker told Butler that changing the numbers on automobiles was "his (Tucker's) end of the bargain" [R. T. 61], and " . . . Charles (Grant) was supposed to be the big wheel, he was supposed to get the money, and Charles give these guys the car to sell" [R. T. 62].

Following the offer of the 1963 blue Cadillac, Tucker came

to Butler and told him Grant had a red 1963 Cadillac convertible that could be purchased for \$2,000 [R. T. 55-59, 64]. Butler was told by Grant that the convertible he wanted would be \$2,000 [R. T. 111, 114]. At the time of the offer of the red Cadillac the car was in Tucker's garage and Tucker said he had done the "paper work" on it [R. T. 104-107]. The car had been obtained from Grant [R. T. 91-92].

When Butler developed difficulty in paying for the car Tucker said "some guys back east was going to kill me because they had the car all set up to be delivered" [R. T. 59]. When Butler told Tucker he wouldn't take the red Cadillac because Grant and Tucker couldn't give him clear title, Tucker offered a white 1963 Cadillac to him [R. T. 60].

TESTIMONY OF ROBERT MASO GRIFFIN:

In the summer of 1963, Griffin sold a 1963 white Cadillac convertible without license plates to Tucker [R. T. 361]. The automobile was stolen in St. Louis, Missouri [R. T. 362], and is the car referred to in Count Five. Grant told Griffin before the sale, that Tucker would buy the car. Prior to the sale to Tucker, Grant had the car at his garage [R. T. 362-363]. Griffin told Tucker the car was stolen [R. T. 363].

During July of 1963 Tucker told Griffin that he (Tucker) had to alternate the numbers on some cars for appellant Henry [R. T. 364-365]. Griffin also testified that he had seen the aforementioned red and white Cadillacs at Henry's lot and Grant's

garage. In February of 1963, the 1962 white Cadillac was seen at Henry's lot [R. T. 368], and the red 1963 convertible was seen at Grant's garage in November of 1963 [R. T. 369].

TESTIMONY OF CARL RUNDQUIST OF THE MISSOURI
DEPARTMENT OF MOTOR VEHICLES:

The documents in the possession of the California Department of Motor Vehicles purportedly showing Missouri registration for the subject 1962 white Cadillac and 1963 red convertible were fraudulent [R. T. 444-449].

TESTIMONY OF RICHARD NEWSOME OF THE
NATIONAL AUTOMOBILE THEFT BUREAU:

The subject 1962 white Cadillac ^{3/} found in the possession of appellant Henry had a true Vehicle Identification Number ^{4/} of 62G009070 and a false VIN of 62J151783.[R. T. 544]. The subject 1963 blue Cadillac ^{5/} found in the possession of appellant Henry had a true VIN of 63J114463 and a false VIN of 63J023726 [R. T. 545].

^{3/} The vehicle of Count Two.

^{4/} Hereinafter referred to as VIN.

^{5/} The vehicle of Counts Three and Four.

TESTIMONY OF EDWARD H. FISHER OF THE
NATIONAL AUTOMOBILE THEFT BUREAU:

The subject 1963 white Cadillac convertible 6/ found in the possession of defendant Tucker had a true VIN of 63F104884 and a false VIN of 63F061724 [R. T. 550].

TESTIMONY OF ROBERT M. ZIMMERS OF THE
FEDERAL BUREAU OF INVESTIGATION:

The false VIN's on the subject 1962 white, 1963 white, and 1963 blue Cadillacs were all made by the same set of dies [R. T. 525].

TESTIMONY OF SERGEANT VOSS OF THE LOS
ANGELES POLICE DEPARTMENT:

The subject 1963 white Cadillac was in Tucker's possession when he was arrested [R. T. 529]. Tucker stated he bought the car from Maso (Robert Maso Griffin) [R. T. 533], which, incidentally, coincides with the testimony of Griffin at R. T. 361-362.

TESTIMONY OF SPECIAL AGENT LESTER M. LED-
BETTER OF THE FEDERAL BUREAU OF INVESTIGATION:

Tucker said, when interviewed by the FBI, that he had purchased the set of dies and used them to place the false VIN on the 1963 white Cadillac [R. T. 558]. The car was purchased from

6/ The vehicle of Count Five.

Griffin, whom Tucker had met through appellant Grant [R. T. 556].

In November of 1964, Ledbetter interviewed appellant Henry and Henry stated he bought the aforesaid 1962 white Cadillac from Wooten [R. T. 573-574].

TESTIMONY OF JAMES HENRY:

Appellant Henry admitted on the stand that the price of the 1962 white Cadillac was not consistent with its value [R. T. 671]. Henry admitted he knew that a false address was used in the registration of the 1962 white Cadillac at the time he obtained it [R. T. 683].

The subject blue 1963 Cadillac was brought to Henry by Wooten [R. T. 687]. When Henry obtained the blue Cadillac, Wooten stated, "Here's an automobile that you will be able to buy right. Right now it is not ready for sale . . ." [R. T. 687]. When the car was brought in it had no license plates on it [R. T. 705]. Henry never paid for the car [R. T. 756]. When the blue 1963 Cadillac was brought to him it had no registration and he never registered it [R. T. 757-758].

Appellant Henry had the 1962 white Cadillac in his possession for approximately a year and one-half and never had a California "pink slip" for it [R. T. 696]. When he acquired said vehicle from Wooten he knew it wasn't transferable [R. T. 748].

TESTIMONY OF DEFENDANT TUCKER:

Tucker's testimony corroborated the testimony of Griffin

by stating that Grant introduced him to Griffin at Grant's garage in July of 1963 [R. T. 782].

TESTIMONY OF ELNA LOMBARD:

On May 8, 1963, Dr. Lombard had her 1963 white Cadillac convertible, true VIN 63F104884 (Exhibit 3), stolen in St. Louis, Missouri [R. T. 17-23]. 7/

TESTIMONY OF LEONARD EVANS:

On June 1, 1963, Mr. Evans had his 1963 blue Cadillac, true VIN 63J114463 (Exhibit 1), stolen from in front of his house in St. Louis, Missouri [R. T. 24-26]. 8/

TESTIMONY OF JAY REEG:

On October 11, 1962, a white 1962 Cadillac, true VIN 62G009070 (Exhibit 2) was stolen from the car lot where Mr. Reeg is the office manager in St. Louis [R. T. 29-38]. 9/

TESTIMONY OF JUANITA McKEE AND ORVILLE HENTZ:

Just before Thanksgiving of 1963 a 1963 red Cadillac convertible true VIN 63F02549 (Exhibit 4) was stolen from Mr. Hentz's

7/ The vehicle of Count Five.

8/ The vehicle of Counts Three and Four.

9/ The vehicle of Count Two.



car lot in St. Louis after it had been placed there for sale by Mrs. McKee [R. T. 38-48]. 10/

SUMMARY OF SUBSTANTIVE EVIDENCE

A brief summary of the evidence as to the substantive counts is as follows:

The vehicle of Count Two was stolen from the lot of Mr. Reeg on October 11, 1962; brought to Wooten in November of 1962; delivered to appellant Grant; taken to appellant Henry a few days later, who kept it in his possession until the time of his arrest after it had had its VIN changed by defendant Tucker.

The vehicle of Counts Three and Four was stolen from Mr. Evans on June 1, 1963; driven to California by defendant Campbell in July of 1963; delivered to appellant Henry in July of 1963, and remained in his possession until his arrest without being registered or paid for; and had its VIN changed by defendant Tucker.

The vehicle of Count Five was stolen in St. Louis from Dr. Lombard on May 8, 1963; brought to California and sold to defendant Tucker by Griffin after Griffin had been introduced to Tucker by appellant Grant; and the vehicle had had its VIN changed by Tucker with the same set of dies used to change the VIN on the vehicles of Counts Two, Three and Four.

The vehicle of Counts Six and Seven was stolen from the

10/ The vehicle of Counts Six and Seven.

lot of Mr. Hentz just before Thanksgiving of 1963; brought to California in November of the same year and delivered to Wooten; it was then delivered to appellant Grant and subsequently concealed in the garage of defendant Tucker; then Bill Grant sold it to Charles Taylor.

IV

SUMMARY OF THE ARGUMENT

The gist of the appellants' appeals is that Roosevelt Wooten's testimony was uncorroborated and Wooten was impeached. As the Court may observe from the above statement of facts, the testimony of Wooten is corroborated. Legally, the testimony of an accomplice need not be corroborated. The credibility of a witness is for the trier of fact, and in this case Judge Clarke came to the right findings of fact.

Appellant Grant argues that his counsel, Mr. Robert Schneider, did not have adequate time to prepare a defense. Aside from the fact that the trial took over two and one-half weeks to complete, Mr. Schneider stated to the Court that the defense was "adequately presented" [R. T. 1033].

ARGUMENT

- A. EVEN THOUGH THE TESTIMONY OF AN ACCOMPLICE NEED NOT BE CORROBORATED, SUCH CORROBORATION EXISTS IN THIS CASE.
-

A conviction of conspiracy, or a substantive crime, may rest on the uncorroborated testimony of accomplices.

Westenrider v. United States, 134 F.2d 772

(9th Cir. 1943), relying on Caminetti v.

United States, 242 U.S. 470 (1917).

It is not for an appellate court to weigh the evidence or to determine the credibility of witnesses. A verdict of conviction must be sustained if, taking the view most favorable to the Government, there is substantial evidence to support it.

Glasser v. United States, 315 U.S. 60, 80 (1942);

Nye & Nissen v. United States, 168 F.2d 846

(9th Cir. 1948), aff'd. 336 U.S. 613 (1949).

The complaint that a man is convicted by accomplices and unsavory characters is answered by the fact that the credibility of a witness is a question for the trier of fact.

Glasser, supra, at 77.

The appellee concedes that Roosevelt Wooten was impeached in connection with two collateral matters - a 1963 metallic green Eldorado Cadillac and a trip to St. Louis in 1963. Wooten initially stated he knew nothing about said Cadillac and was not in St. Louis

in 1963. At page 1031 of the Reporter's Transcript Wooten stated his earlier testimony with respect to the trip and car was not the truth. However, at page 1038 Wooten explained that a man came to him and told him that if his name was mentioned in connection with said 1963 Eldorado involved in the trip back from St. Louis, then he (Wooten) would be killed. The fact that Wooten was indeed threatened is born out by the testimony of Special Agent Gerald Moore, of the FBI, at page 1101 of the Reporter's Transcript.

The convictions on the several counts are also supported by the fact that Henry and Grant were in possession of the stolen vehicles shortly after the subject thefts. The presumption arising from possession of recently stolen property would support the convictions arising out of the substantive counts.

It is submitted that the testimony of the witnesses other than that of Wooten, combined with the documents admitted into evidence, would support a conviction of the appellants on each and every count.

**B. THERE WAS SUFFICIENT TIME FOR
 COUNSEL FOR APPELLANT GRANT
 TO PREPARE AN ADEQUATE DEFENSE.**

The arraignment of defendant Grant took place on March 8, 1965 [R. T. Vol. A]. At the arraignment of Grant, his attorney was offered an opportunity to see all documentary evidence and to discuss the testimony of the witnesses against Grant with the prosecutor [R. T. 9a].

The facts do not support the allegation that counsel for Grant could not prepare "an adequate defense". The trial lasted over two and one-half weeks. It was not until March 17, 1965, that the defendants started their defense by calling witnesses to the stand. On March 16, 1965, defendant Henry put on one witness out of order. In the time between March 8 and March 17 there was adequate time to prepare a defense inasmuch as the issues were not complex.

It is to be observed that counsel for Grant has had a change of opinion since the time the trial took place over one year ago. At that time, March 23, 1965, Mr. Schneider, who is also counsel for Grant on this appeal, stated that the defense had been "adequately presented" [R. T. 1033].

It is noted that counsel for Grant thoroughly cross-examined all government witnesses, called several witnesses for Grant and, generally, ably represented Grant. At no point in Grant's Opening Brief is there demonstrated how counsel for Grant might have been hampered.

VI

CONCLUSION

The record, as demonstrated by the above statement of facts, supports the convictions herein. Not only was Roosevelt Wooten's testimony corroborated, but the appellants could have been convicted without such testimony. The dates of possession



admitted by the defendants, the dies, the trips, the stolen nature of the automobiles, the fact the vehicles were all stolen in St. Louis, the modus operandi of similar fraudulent registrations, and the inconsistent statements of the defendants all support the convictions. The agreement to transport the stolen vehicles can be inferred from the testimony and documentary evidence without looking to Wooten's testimony.

The claim that counsel for Grant was not afforded adequate time to prepare a defense is not supported by the facts.

The judgments below should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Ronald S. Morrow
RONALD S. MORROW

